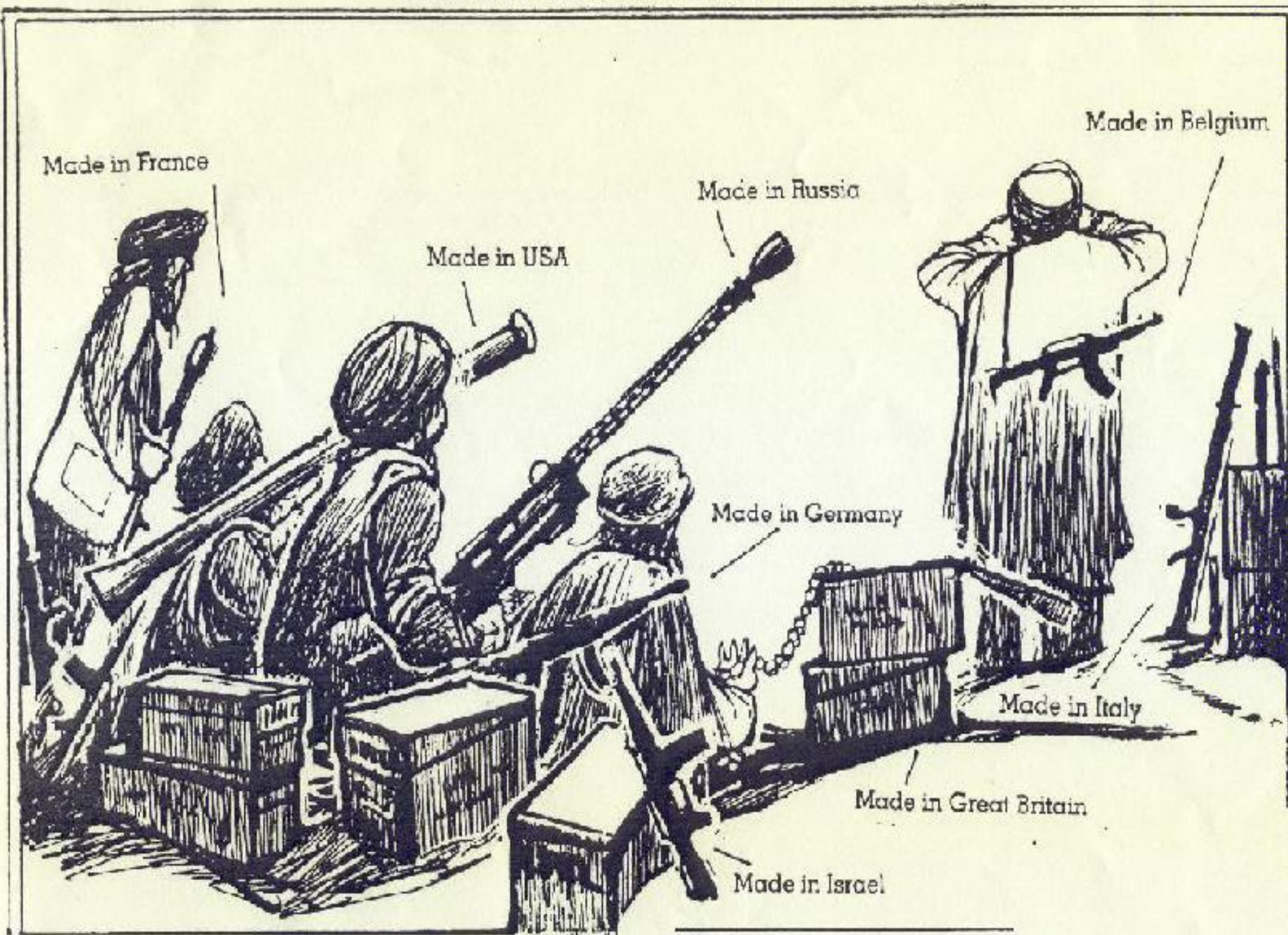


Technology Transfer and Export Controls

Report Documentation Page				Form Approved OMB No. 0704-0188	
Public reporting burden for the collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington VA 22202-4302. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to a penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.					
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14. ABSTRACT					
15. SUBJECT TERMS					
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a. REPORT unclassified	b. ABSTRACT unclassified	c. THIS PAGE unclassified			

Taliban Forces Await the Alliance Attack



Overview

- **Technology Transfer & Export Controls (Introduction)**
- **Controlled Unclassified Information**
- **Foreign Government and North Atlantic Treaty Organization (NATO) Information**
- **Foreign Disclosure and the National Disclosure Policy (NDP)**
- **Export Approval/License Process**

Reasons for Technology Transfer/Export Control

- **National Security**
- **Foreign Policy**
- **Weapons of Mass Destruction**
- **Terrorism**

"...export controls, which are nonproliferation in action. They are our FIRST LINE OF DEFENSE in denying our enemies the access to the weapons they would turn against us. And export controls are a very cost effective tool."

**John Hillen, Former State Dep
Assistant Secretary
for Political-Military Affairs**



International Program

An international program is

- **Lawful and authorized**
- **Government or commercial effort with contributing or receiving foreign participant**
- **Information or technology is transferred from one country to another**

International Programs Security

- **Total effort that safeguards information/technology identified as requiring control**
- **Generated by, provided to, or transferred in an international program**

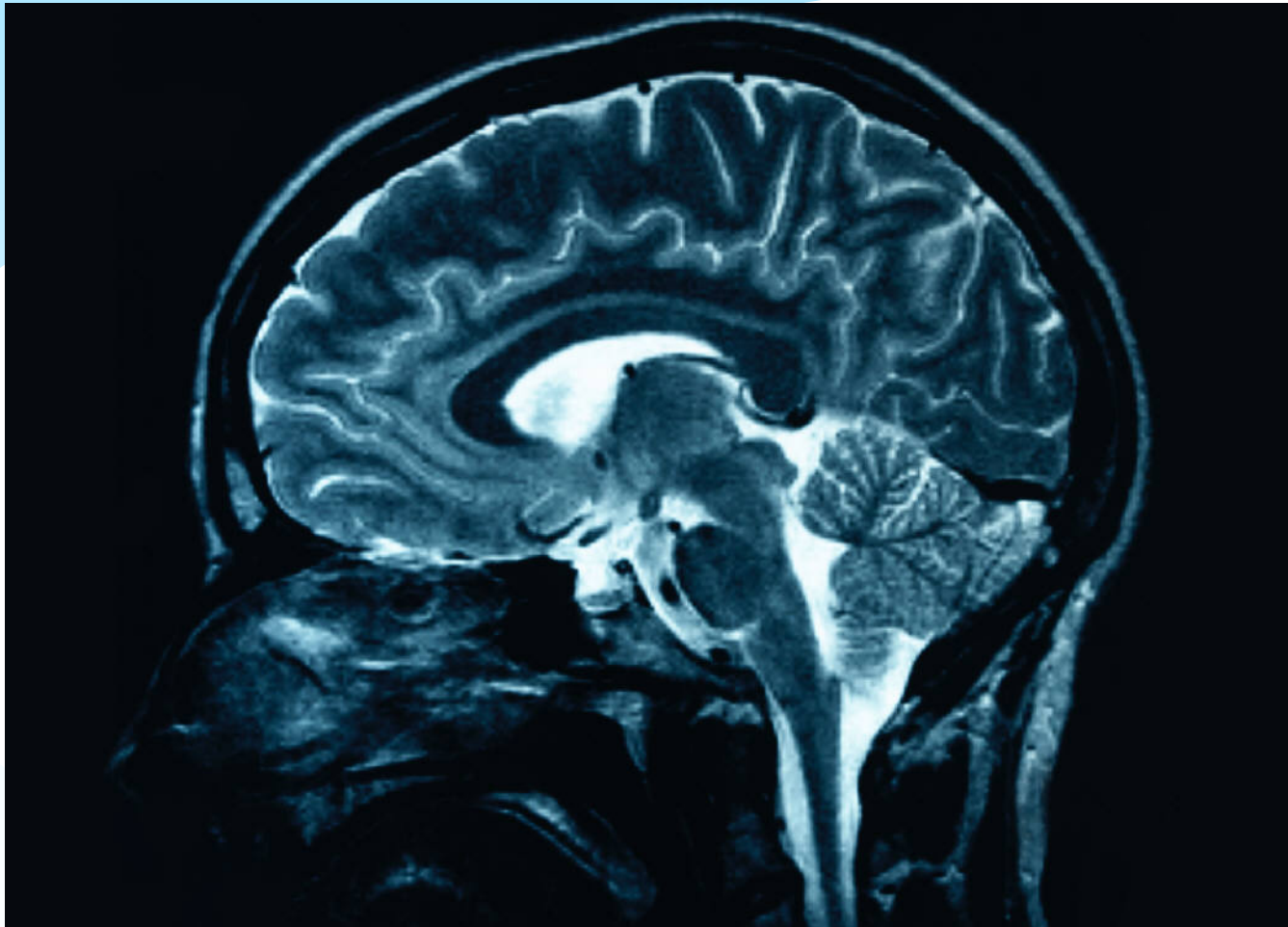
DoD Policy on Technology

- **A valuable, limited national security resource***
- **Protected and invested in pursuit of national security objectives**
- **International trade is key to strong U.S. industrial base**
- **Export controls in way to minimally interfere with legitimate trade**

Technical Data

- **Information relating to defense articles or defense services and required for:**
 - **operation**
 - **repair**
 - **testing**
 - **maintenance**
 - **modification**
 - **design**
 - **development**
 - **production**
 - **manufacture**
 - **assembly**
- **Includes blueprints, drawings, photographs, plans, instructions, and documentation**
- **Software as defined in U.S. Munitions List**
- **Does not include basic marketing info on function, purpose or general descriptions of defense articles**

What is Technology?



Technology Transfer Mechanisms In Open Society

- **Commercial and government sales**
- **Scientific, engineering, and academic exchanges**
- **Licensing and other data exchange agreements**
- **Co-development and co-production agreements**
- **Foreign technical missions**
- **International meetings/symposia**
- **Freedom Of Information Act (FOIA)**
- **International visits**
- **Clandestine or illegal acquisition of military/dual-use technology/products**
- **Diversion or evasion of control procedures**

Technology Transfer Decision Basis

- **2 Fundamental security considerations**
- **3 Documents forming the legal and policy basis**
- **3 Conditions that must be agreed upon by foreign recipients**
- **2 Activities associated with International Programs**

Fundamental Considerations

1. Access

Sharing of U.S. defense articles or information is in the best interests of the U.S.

2. Protection

Maintain security and provide security substantially the same as that provided by the U.S.

**Access + Protection =
Export and Disclosure Authorization Decisions**

2

Legal and Policy Basis

- **Arms Export Control Act (AECA)**
- **Executive Order 12958, as amended**
- **National Security Decision Memorandum (NSDM) 119**



3

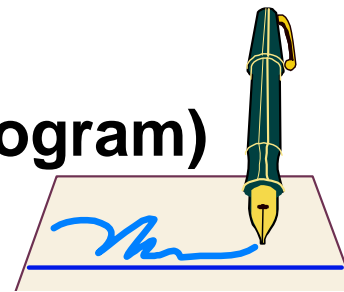
Arms Export Control Act (AECA)

- Forms the **legal basis** for the security requirements of most DoD International Programs
- Governs export of **defense articles and services**
- Covers **commercial** and **government** programs
- Implemented by **ITAR** (State Dept) which contains US Munitions List (USML)

Legal and Policy Basis

E.O. 12958

- **Establishes the Executive Branch's National Security Information Program**
- **Legal basis to protect Foreign Government Information (FGI)**
- **Implemented by**
 - **Information Security Oversight Office (ISOO) Directive 1**
 - **DoD 5200.1-R (Information Security Program)**



National Security Decision Memorandum (NSDM) 119

- **Governs decisions on foreign disclosure of Classified Military Information (CMI)**
- **Assigns implementation of NDP to Secretaries of State and Defense**
- **Establishes the NDP Committee (NDPC)**
- **Requires annual report to National Security Council (NSC)**

Security Conditions

- **No transfer** of title or possession without USG written consent
- **No use** for other purposes without USG written consent
- Recipient provides substantially the same degree of **protection**

Government-to-Government Principle

**Governs TWO activities related to
International Programs:**

**1. Disclosure/Export authorizations
decisions = government-to-government
decision**

**2. Transfers of classified information and
material = government-to-government
transfer**

2

Government-to-Government Transfer

- **Transfer through official government channels or channels approved in writing by the governments**
- **Provides for government accountability and control until security custody is officially transferred to the Designated Government Representative (DGR) appointed by the recipient government**
- **Recipient government's Security Assurance contained in courier orders or visit request**
- **Continuous receipts required for all international transfers of classified information**



U.S. Government Agencies

- **Department of State: Military**
- **Department of Commerce: Dual-use and nonmilitary**
- **Department of Defense: Review agency**
 - **Defense Technology Security Administration (DTSA)**

Defense Technology Security Administration (DTSA)

- **DoD entry point for export requests**
 - **State Department (DDTC)**
 - **Commerce Department (BIS)**
- **State and Commerce send over 15,000 proposed license to DTSA for review and comment a year**
- **Approximately 80% of the time DTSA develops DoD response**
- **Approximately 20% ask Services for input**



Key Players in Tech Transfer and International Programs Security

**Arms Export Control
Act (AECA)**

Department of State

**Director of Defense
Trade Controls
(DDTC)**

ITAR

Munitions List (USML)

**Department of
Defense**

**Export
Administration**

**Department of
Commerce**

**Bureau of Industry
and Security
(BIS)**

EAR

**Commerce Control
List (CCL)**

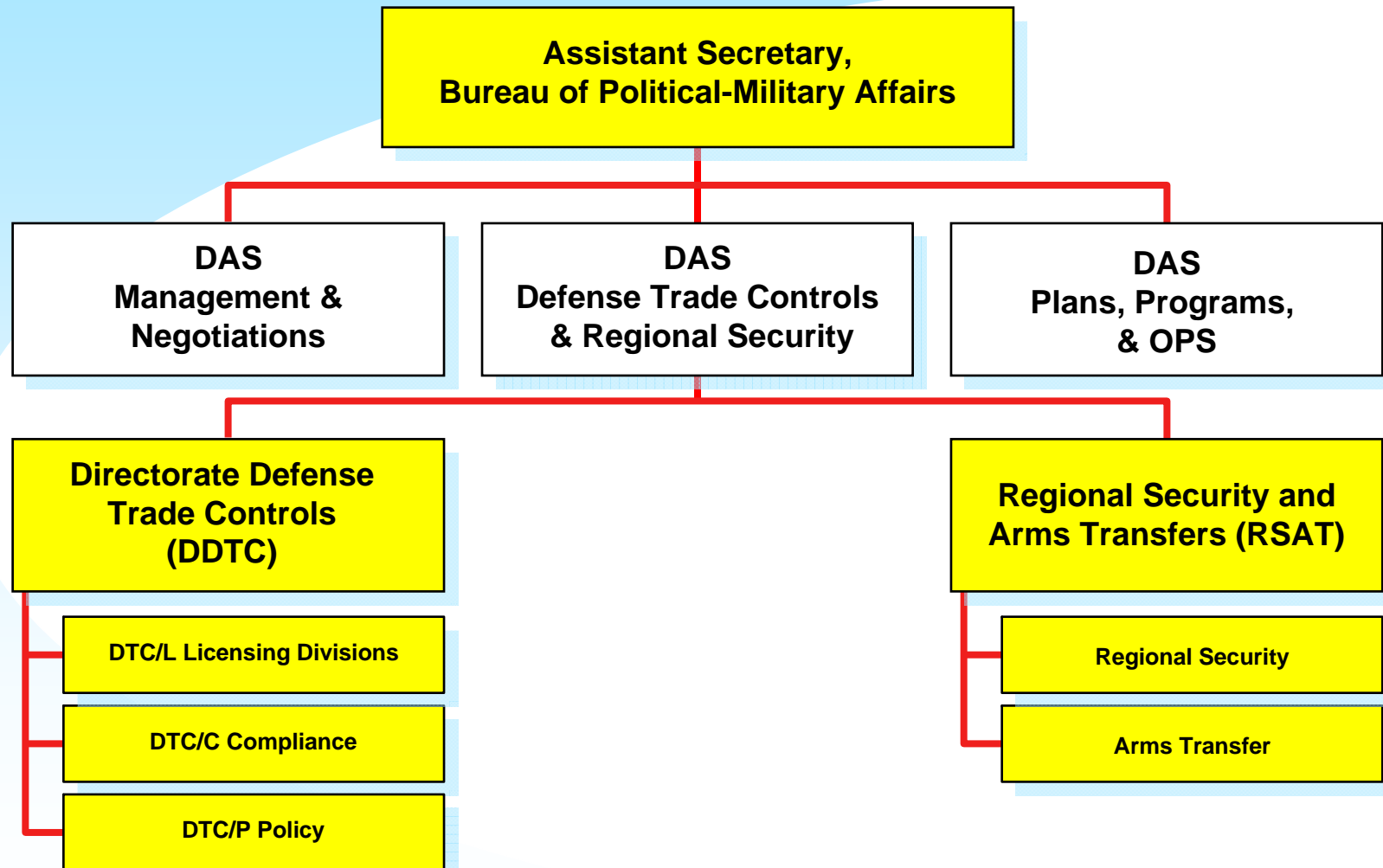
**Undersecretary
(Acquisition
Technology and
Logistics)**

**Undersecretary
(Policy)**

**Undersecretary
(Intelligence)**

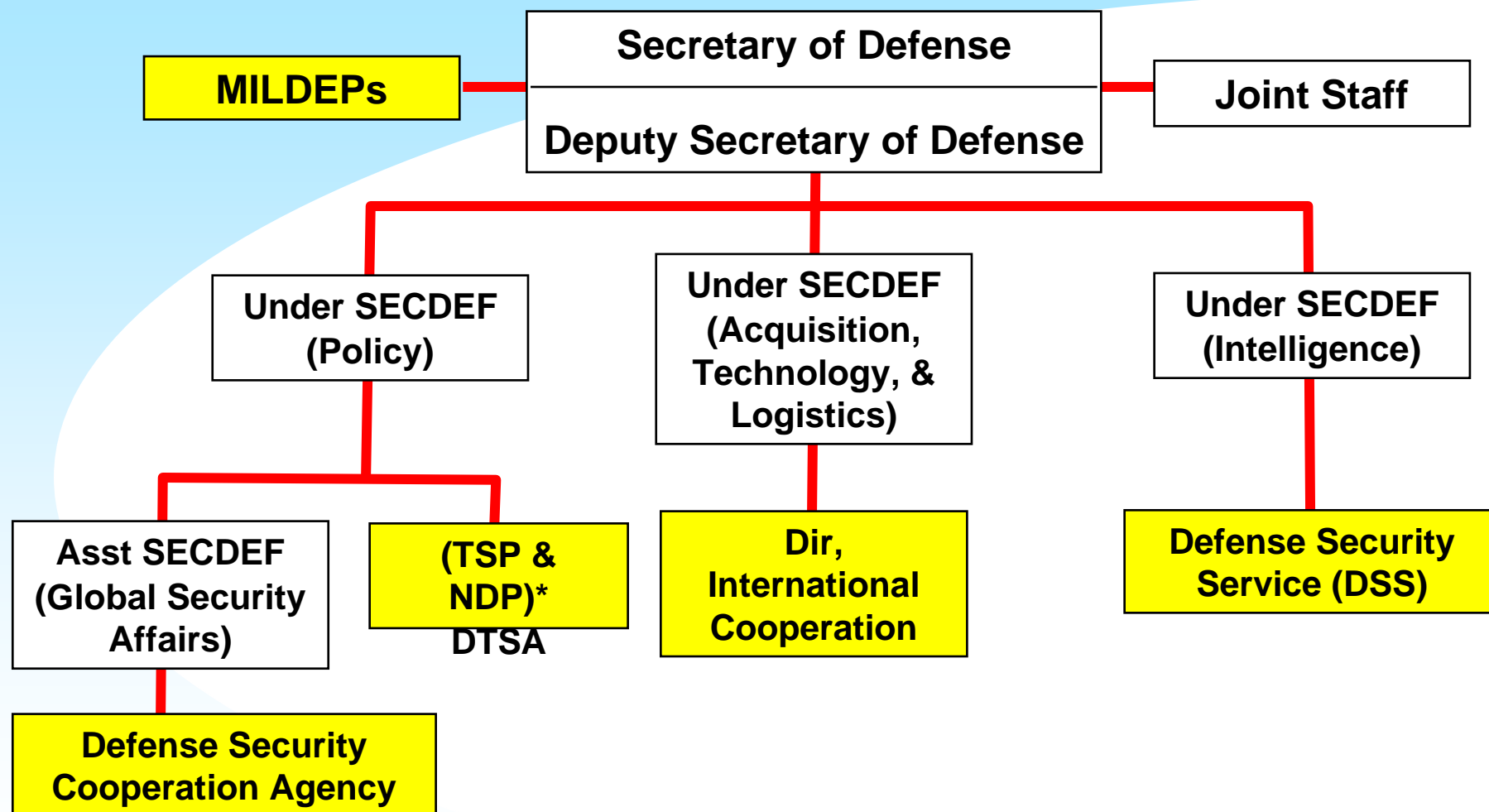


State Department Bureau of Political-Military Affairs



Effective 1 Jan 08

Department of Defense



*Technology Security Policy &
National Disclosure Policy



Controlled Unclassified Information (CUI)



Public Domain or Open Source Information

Is unclassified information the same as public domain or open source information?



Controlled Unclassified Information

- A term that collectively describes unclassified information to which access or distribution controls have been applied in accordance with national laws and regulations
- For the U.S., information that is **exempt** from public disclosure under the Freedom of Information Act (FOIA), includes certain export controlled information

Nine FOIA Exemptions

- 1. Classified information pursuant to Executive Order 12958, or prior orders.**
- 2. Internal rules and practices of a government agency.**
- 3. Specifically exempted by statute to include export controlled technical data.**
- 4. Trade secrets and commercial and financial information.**
- 5. Inter-agency and intra-agency memoranda.**
- 6. Information release invasion of personal privacy.**
- 7. Investigative records related to law enforcement.**
- 8. Reports prepared for the regulation or supervision of financial institutions.**
- 9. Geological and geophysical information concerning wells.**

FOIA Exemption # 3

Secretary of Defense Authority

- **Public Law 98-94 (10 USC § 130)**
provides the **Secretary of Defense**
with the authority to withhold from
the public:
 - **Unclassified critical technical data**
 - **With military or space application**
 - **In the possession of, or under the control of a DoD**

Handling CUI

- **Identifying/Marking CUI**
 - Determine need to limit distribution
 - Mark at generation; portion mark
- **Access – need to know**
- **Disclosure/Release – FOIA or foreign disclosure channels**
- **Security**
 - Storage
 - Transmission
 - Destruction
- **Contract Clauses**



Foreign Government & North Atlantic Treaty Organization (NATO) Information

Foreign Government Information

- **Provided or jointly produced with foreign government or international organization**
- **With the expectation that it is to be held “in confidence”**
- **May be classified or unclassified**



Handling FGI

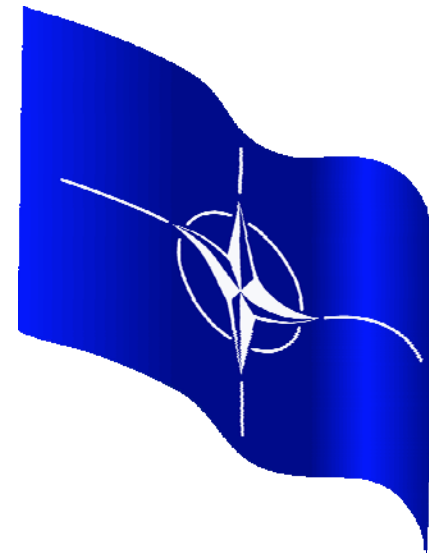
- **Based on NATO requirements**
- **Storage - same, but separate**
- **Access - need to know; no transfer to third country entity**
- **Transmittal – generally same (no commercial express/uncleared overnight carriers); receipts for international; originator may waive for RESTRICTED**
- **Records - TS, S, C (receipt & dispatch)**
- **Destruction – in a manner to make reconstruction difficult**

Handling FGI

- **Based on NATO standards**
- **Storage - same, but separate**
- **Access - need to know**
- **Transmittal - generally same (no commercial express), but receipts for international; originator may waive for RESTRICTED**
- **Records - TS, S, C (receipt & dispatch)**

NATO Program

- **Usually commonly funded**
- **Managed by a NATO agency**
- **Governed by NATO security regulations**
 - **EXAMPLE: NATO AWACS**



NATO Information

- **While the medium containing the information belongs to NATO, the information remains the property of the entity that originated or furnished it**
- **NATO entity having custody can disseminate further within NATO based on Need to Know, unless marked with restriction**



NATO Markings

- **COSMIC TOP SECRET (CTS)**
- **NATO SECRET (NS)**
- **NATO CONFIDENTIAL (NC)**
- **NATO RESTRICTED (NR)**
- **NATO Unclassified (NU)**

***ATOMAL identifies U.S. RESTRICTED Data (RD),
Formerly RESTRICTED Data (FRD) and
UK Atomic Information***



Access requirements

- **Requisite national clearance**
- **Need-to-Know**
- **Briefing**
- **NATO organization, staff, command or agency approves of access**
- **None for RESTRICTED**
- **Information no longer needed, debrief**

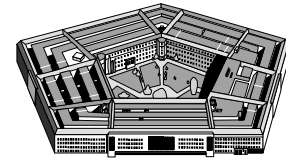


NATO Security Agreement

- **Each NATO member must appoint National Security Authority (NSA) and Designated Security Authority (DSA)**
 - **U.S. Secretary of Defense is “United States Security Authority for NATO Affairs” (USSAN) and has the responsibility to implement NATO security policy**
 - **DUSD (TSP & NDP) is the DSA**
- **NATO requires main distribution point for receipt and distribution of NATO documents (Central U.S. Registry)**

Central U.S. Registry (CUSR)

- **NATO main distribution point**
- **Department of the Army manages at the Pentagon**
- **Establishes sub-registries and control points within other departments and agencies**
- **Registry system accounts for CTS, NS, ATOMAL and other accountable information**



<https://secureweb.hqda.pentagon.mil/cusr/>

UNCLASSIFIED

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Central United States Registry - Microsoft Internet Explorer provided by USAF

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Address <https://secureweb.hqda.pentagon.mil/cusr/> Go Favorites

 **Central United States Registry** 

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 **Central United States Registry Mission Statement**

Since early 1950, the Central United States Registry has existed to provide NATO information to U.S. customers, to disseminate copies of previously issued NATO documents, and to conduct oversight for U.S. organizations and agencies which retain or process NATO classified information. The Registry operates under the guidance of the Secretary of Defense who is the United States Security Authority for NATO Affairs. In fact, the Secretary of Defense has designated the Deputy Under Secretary of Defense (Policy Support) to act on his behalf in all U.S. matters dealing with NATO. The Secretary of Defense has appointed the Secretary of the Army as Executive Agent to operate and administer the Central United States Registry (CUSR).

While not all NATO information and material coming into the United States flows through the CUSR, a very large portion of it does. A substantial amount of that material is NATO classified information which requires handling and safeguarding procedures often stricter than that accorded U.S. information. A Registry system has been established within which NATO classified material, especially the most sensitive, can be properly protected and accounted for. Today, the CUSR oversees more than 130 subregistries that form the living, breathing U.S. registry system.

Done Trusted sites

start                             

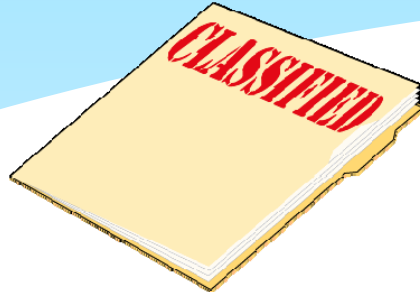
Disposition of NATO Information

- **Hand Carry**
 - Same requirements as U.S.
 - NATO courier certificates and briefings required
- **Destruction of NATO information**
 - Same manner as U.S.
 - COSMIC TOP SECRET & NATO SECRET must be witnessed and recorded
 - Destruction records not required for NATO CONFIDENTIAL and NATO RESTRICTED information

National Disclosure Policy (NDP) and National Disclosure Policy Committee (NDPC)



Classified Military Information (CMI)



“Information originated by or for the Department of Defense or its Agencies or is under their jurisdiction or control and that requires protection in the interest of national security.”*

***DoDD 5230.11**

CMI Authority

- **CMI authority is:**
 - **Arms Export Control Act**
 - **Executive Order 12958 (Classified National Security Information)**
 - **National Security Decision Memorandum (NSDM-119)**

National Disclosure Policy Procedures

- **Provides a framework and mechanism for implementing the security requirements of:**
 - **Arms Export Control Act (AECA)**
 - **Executive Order 12958**
 - **NSDM 119**
- **DoDD 5230.11, “Disclosure of Classified Military Information to Foreign Governments and International Organizations”**



National Security Decision Memorandum-119

- **Governs decisions on foreign disclosure of classified military information**
- **Assigns implementation of NDP to Secretaries of State and Defense**
 - **Other US Government departments and agencies when appropriate**
- **Establishment of mechanism for effective implementation of policy**
 - **Develop information for General Security Agreements (GSA)**
 - **Conduct periodic on-site surveys**

Security Survey

- **Purpose - Enables the NDPC to determine by physical on-site review, whether a particular foreign government has the capability to protect CMI substantially the same as the United States**
 - **Provides for the exchange of information**
 - **Reviews foreign governments security laws and regulations**
 - **U.S. Embassy views also obtained**

Security Survey

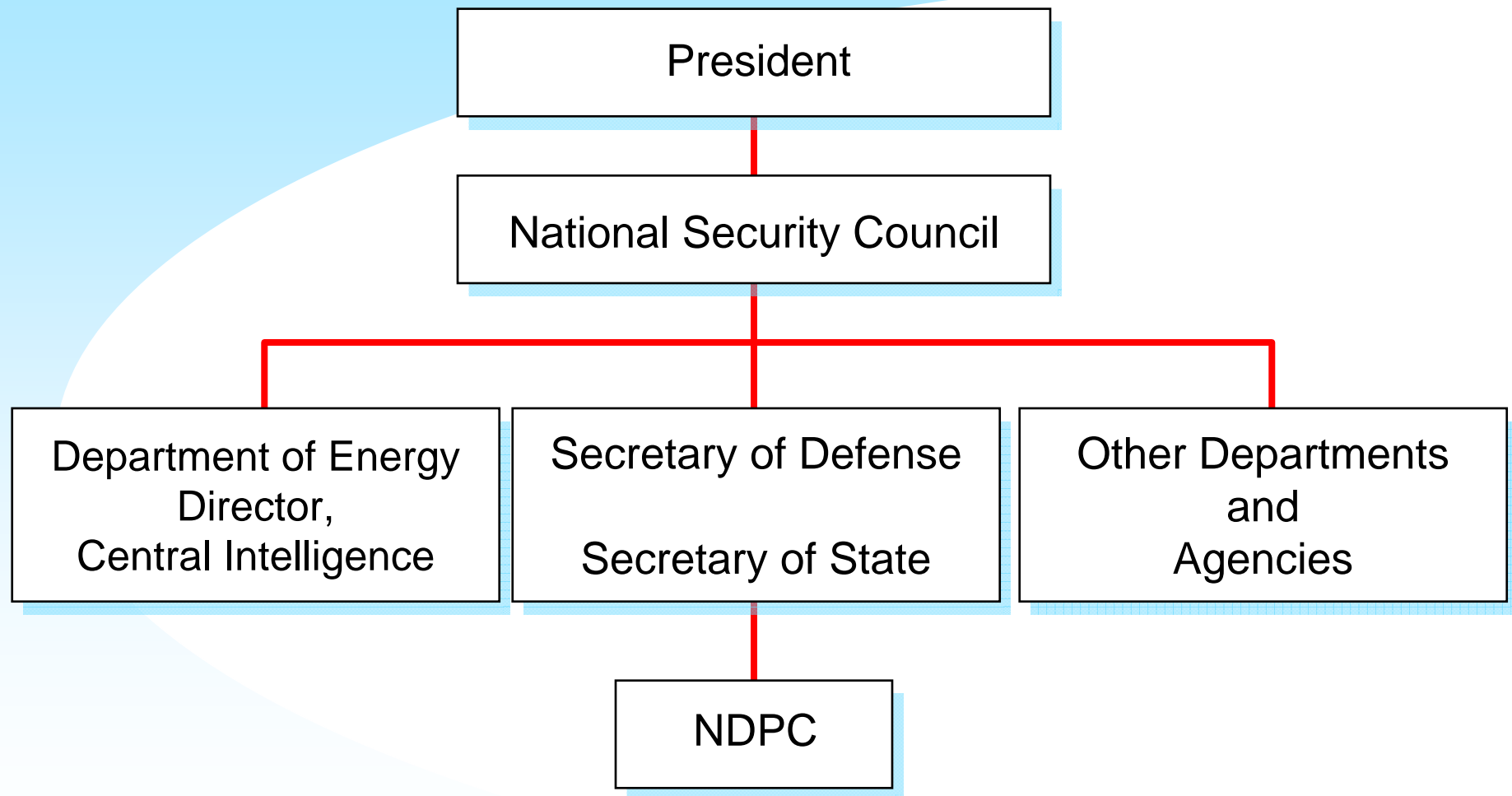
- **Evaluates foreign government and industry**
 - **Personnel security**
 - **Information control**
 - **Physical security**
- **May results in negotiated security agreement**



General Security Agreements

- Negotiated via diplomatic channels
- Affords classified material substantially the **same degree of security protection** as the releasing government would provide to its own classified information.
- Provides for **use** limitations
- Restricts **third party transfers** and protects proprietary rights
- Provides for reporting losses or compromises
- Commits to protect any classified information released to a third party

National Disclosure Policy



NDPC Members

General

- **Secretary of State**
- **Secretary of Defense**
(appoints Chair)
- **Secretary of Army**
- **Secretary of Navy**
- **Secretary of Air Force**
- **Chairman, Joint Chiefs of Staff**

Special

- **Secretary of Energy**
- **Director, National Intelligence**
- **Director, CIA**
- **USD (AT&L)**
- **USD (I)**
- **USD (P)**
- **ASD (NII)/DoD CIO**
- **ATSD (NCB)**
- **Director, DIA**
- **Director, MDA**
- **Director, NGA**
- **Director, NSA**

Disclosure Authority

- **Is an official, specifically designated in writing, who may disclose or deny CMI per NDP, provided:**
 - **The information is originated by the official's department or agency**
 - **The official is responsible for the information to be disclosed**
 - **Only those officials with such specific authority may make foreign disclosure determinations**
- **DoDD 5230.11**

Disclosure Authority in DoD

(DoD Directive 5230.11)

Personal Disclosure Authority

- Secretary of Defense
- Deputy Secretary of Defense

Delegated Disclosure Authority

- Secretaries of Army, Navy, United States Air Force
- Chairman, JCS
- USD(P)
- USD (AT&L)
- USD(I)
- Directors, DIA, NSA/CSS, MDA, & NGA

NSDM-119 Basic Policy for CMI

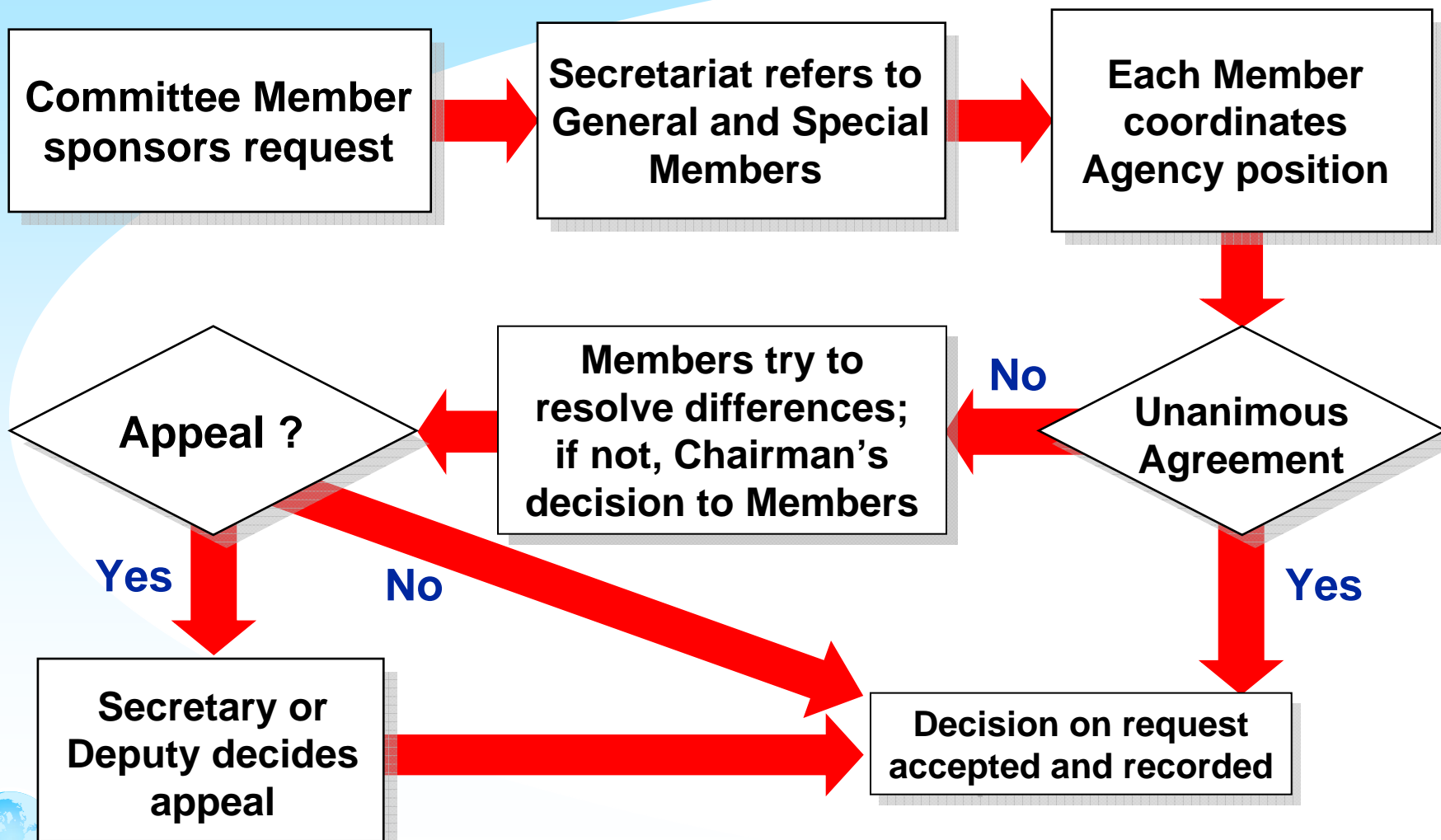
- **Five disclosure criteria:**
 - 1. Supports U.S. foreign policy
 - 2. Not jeopardize U.S. Military security (damage assessment)
 - 3. Recipient's capability and intent to protect
 - 4. Benefit to the USG (POL/MIL/National Security)
 - 5. Release limited to that necessary to satisfy U.S. goals
- **Customer must have "Need to Know"**
- **Implemented by DoDD 5230.11, Disclosure of Classified Military Information**



Annex to National Disclosure Policy (NDP-1)

Country Charts		Country A	Country B	Country C
Organization, training and employment of military forces	1	S	C	
Military materiel and munitions	2	S	C	
Applied research and development information and materiel	3	C		
Production information	4	Disclosure of CMI requires an exception to NDP.		
Combined military operations, planning and readiness	5			
U.S. order of battle	6			
North American defense	7			
Military intelligence	8	TS	S	X

National Disclosure Policy Exception Process



After the NDPC Decision

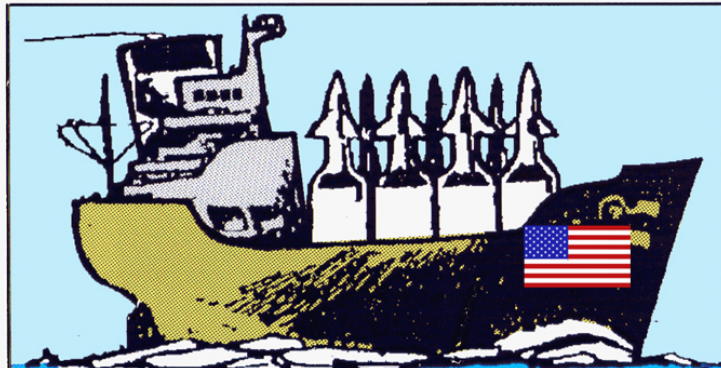
- **Decision published to members in NDPC Record of Action**
- **Decision recorded in the National Disclosure Policy System (NDPS) - element of Security Policy Automated Network (SPAN)**
- **Requesting member prepares Delegation of Disclosure Authority Letter (DDL)**

False Impressions*

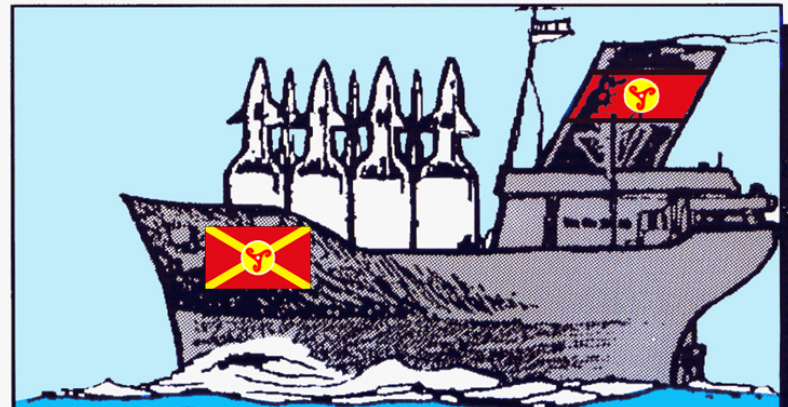
- **Case-by-Case**
- **Disclosure decision must be based on classification level of all information which may be required for release if system is sold**
- **No release of weapon specific information or Price & Availability data until authority obtained to release highest level of CMI ultimately required**
- **U.S. policy - Avoid creating false impressions***

Export Approval/ License Process

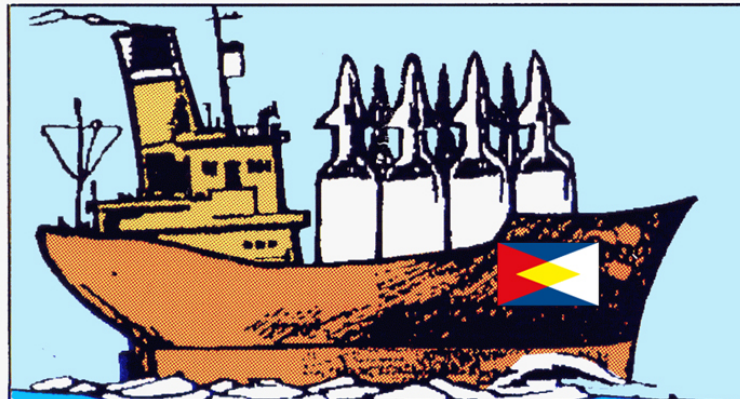
Technology Transfer



1. U.S. ships Humdinger missiles to Bandaria



2. Bandaria exports it to Zastavia



3. Zastavia exports it to Akkadia



4. Akkadia sends it back to Bandaria



DISAST

What Is an Export*?

- **Sending/taking defense articles out of U.S. in any way**
- **Transferring registration, control, or ownership to a foreign person of any aircraft, vessel, or satellite covered by U.S. Munitions List in U.S. or abroad**
- **Disclosing (including orally and visually) or transferring any defense article or technical data:**
 - **To embassy, agency or subdivision of a foreign government in U.S.**
 - **To a foreign person in U.S. or abroad**

Export Examples

- **Foreign customer attending meetings where technical data are discussed**
- **Delivery of technical data to the U.S. representatives of a foreign country**
- **Can take many forms - oral, visual, written**
- **Can occur via discussion, fax, telephone call, plant tour, other ways**

Directorate of Defense Trade Controls

www.pmdtc.state.gov/official_laws/itar_consolidated.htm

INFOCON: 3 UNCLASSIFIED EPCON: Alpha

US State Department - Policy - Directorate of Defense Trade Controls - Microsoft Internet Explorer provided by USAF

http://www.pmdtc.state.gov/regulations_laws/itar_consolidated.html

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US State Department - Policy - Directorate of Defense...



Directorate of Defense Trade Controls

DDTC Homepage/Regulations and Laws/ITAR/Consolidated

Printer Friendly Version

Updated October 7, 2008

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Consolidated ITAR 2008

For your convenience and general reference, DDTC provides the following version of the regulations, which integrates the text of the annual April 1 publication in the CFR with subsequent amendments made via *Federal Register* notices. The text of this version is obtained from *GPO Access*. Please note GPO's disclaimer that "it is not an official legal edition of the CFR." Registrants and other persons subject to ITAR controls remain obligated to maintain awareness of and compliance with the official ITAR and the latest *Federal Register* publications that affect exports of defense articles

ITAR Part 120 - Purpose and Definitions

ITAR Part 121 - The United States Munitions List

ITAR Part 122 - Registration of Manufacturers and Exporters

ITAR Part 123 - Licenses for the Export of Defense Articles

ITAR Part 124 - Agreements, Off-Shore Procurement and Other Defense Services

ITAR Part 125 - Licenses for the Export of Technical Data and Classified Defense Articles

ITAR Part 126 - General Policies and Provisions

ITAR Part 127 - Violations and Penalties

ITAR Part 128 - Administrative Procedures

ITAR Part 129 - Registration and Licensing of Brokers

ITAR Part 130 - Political Contributions, Fees and Commissions

The U.S. Munitions List

CATEGORY

- I Firearms, Close Assault Weapons and Combat Shotguns**
- II Guns and Armament**
- III Ammunition/Ordnance**
- IV Launch vehicles, Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs and Mines**
- V Explosives and Energetic Materials, Propellants, Incendiary Agents and Their Constituents**
- VI Vessels of war and Special Naval Equipment**
- VII Tanks and Military Vehicles**
- VIII Aircraft and Associated Equipment**
- :**
- XX Submersible Vessels, Oceanographic and Associated Equipment**
- XXI Miscellaneous Articles**



Export Forms and Licenses (ITAR Part 123 and 126)

- **DSP-5** Permanent export unclassified technical data or equipment
- **DSP-61** Temporary import of unclassified defense articles (in-transit)
- **DSP-73** Temporary export of unclassified defense articles
- **DSP-83** Non-transfer and Use Certificate
- **DSP-85** Permanent/Temporary Export/Import of classified articles/technical data
- **DSP-94** FMS shipments
- **DS-2032** Registration Form

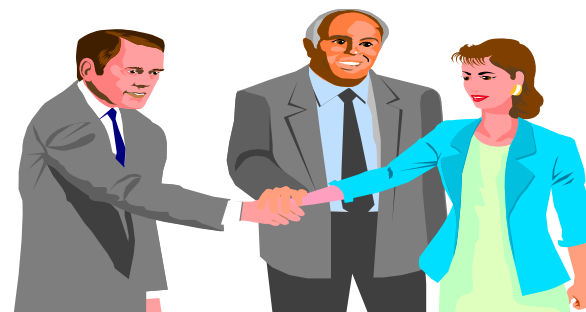
Manufacturing License Agreement (MLA)

An agreement (e.g., Contract) whereby a U.S. Person grants a Foreign Person an authorization to manufacture defense articles abroad and which involves or contemplates:

- The export of technical data or**
- The use by the foreign person of technical data or defense articles previously exported by the U.S. person.**

Technical Assistance Agreement (TAA)

Agreement or Contract between a U.S. & a Foreign Person for defense services or disclosure of tech data (usually on-going vs. one time disclosure)



Foreign Military Sales (FMS) License Exemption (Part 126.6)

- **Technical data sold, leased or loaned under DoD FMS program:**
 - **Under a Letter of Offer and Acceptance (LOA)**
 - **And accompanied by a valid **DSP-94****
 - **And Exported from the US**
 - **On a military aircraft or naval vessel of that government**
 - **Or by a freight forwarder or agent of that gov't**
 - **Or via the Defense Transportation Service (DTS)**

Export License Review Process



DoS reviews/updates up to 83,000 export licenses per year in FY 08;
About 25% of these go to DoD/DTSA

How Do Violations Occur?

- **Marketing presentations containing defense technical data made to foreign governments or foreign companies without proper license/authorization**
- **Foreign national employees in the U.S. working on defense programs and given access to defense technical data without proper license/authorization**
- **International trade show displays not properly licensed**
- **Shipping errors**

State Department ITAR Penalties

- **Criminal: “Willful” violation:**
 - Up to \$1m per violation for corporations
 - Up to \$1m per violation and up to 10 years in jail for individuals
- **Civil: “Any” Violation:**
 - Up to \$500k per violation for corporations and/or individuals
- **Civil and Criminal:**
 - Seizure or forfeiture of goods
 - Debarment from licensing for as long as three years
 - Potential debarment from Government contracting for up to three years

Summary

- **Technology Transfer & Export Controls (Introduction)**
- **Controlled Unclassified Information**
- **Foreign Government and North Atlantic Treaty Organization (NATO) Information**
- **Foreign Disclosure and the National Disclosure Policy (NDP)**
- **Export Approval/License Process**

Technology Transfer and Export Controls